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THE STATE OF NEW HAMPSHIRE



THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

May 20, 1983

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Mr. Mitchell Dozet, Director
Office of Institutional Collections
Division of Mental Health and
Developmental Services
105 Pleasant Street
Concord, New Hampshire 03301

Dear Mr. Dozet:

By memorandum dated March 22, 1983, you requested an opinion regarding the liability for the educational costs incurred by a child who is evaluated at a state institution pursuant to RSA 169-B, 169-C or 169-D and who is in the custody of the Division of Welfare. It is our opinion that the school district in which the parents of the child reside on the January first preceding recovery is liable for the educational expenses incurred as a result of such an evaluation.

As we pointed out in our opinion to Gary Fowler dated March 14, 1983, the school district is only liable for educational expenses incurred during an evaluation under RSA 169-B, 169-C or 169-D. All other expenses are chargeable to the legally liable unit established pursuant to those statutes. As was further indicated in the March 14 opinion, however, the question which this opinion answers is more complicated if the child is determined to be in need of special education under RSA 186-C. This opinion therefore does not answer your question as to the liability for the educational costs of a placement ordered by the court under RSA 169-B, 169-C or 169-D for an educationally handicapped child under RSA 186-C who is in the custody of the Division of Welfare.



RSA 126-A:49 states, in part:

"Education expenses of any resident or patient, who is capable of being benefited by instruction and who is between 6 and 21 years of age ... shall be recovered from the school district in which the patient's or resident's parents or legal guardian reside on the January first preceding the recovery ..."

Since the statute makes no distinction between the liability for a child of whom the parents still have custody and one of whom the Division of Welfare has custody, we must assume that both situations are to be treated in the same manner. Thus, the school district in which the parents of the patient reside on the January first preceding the recovery is liable for the education expenses incurred during an RSA 169-B, 169-C or 169-D evaluation regardless of whether the Division of Welfare has custody. If the parents are divorced or separated or there is a similar problem in determining the school district in which the parents reside, as is true in the case of W.J. referred to in your memo, RSA 126-A does not provide a method of determining settlement, and we must therefore look to the general welfare laws, and specifically to RSA 164-C, to determine the proper school district. See In re John M., 122 N.H. 1120, 1130-31 (1982). In the case of W.J., who was a legitimate child, even though her parents were divorced, the school district in which her father resided on January first must be held liable for her expenses.

Although RSA 193:27-29 generally covers the liability for the education of children in homes for children or health care facilities, and formerly covered the liability for the education expenses of children placed in state institutions, these statutes were amended in 1982 and any reference to state institutions was deleted. In our opinion, the provisions of RSA 193:29 would therefore have no bearing upon the issue of liability for educational expenses incurred during an evaluation of a child in a state institution.

We, therefore, must interpret RSA 126-A:49 on its face to require that the school district of the parents be held liable for the educational expenses.

I trust this has answered your question. Please let me know if you have any further questions.

Sincerely,

Douglas L. Patch

Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

MAY 26 '83

